

TRANS AGING: WE'RE STILL HERE!

It's not easy getting older, but transgender and gender-nonconforming (TGNC) people have especially good reasons to know their legal rights as they enter their Golden Years. The discrimination and violations of physical privacy that plague most TGNC people when they are younger become more and more likely, especially with increased reliance on the health care system.

In a 2011 study¹ among 6,450 transgender adults of all ages, nearly one-fifth reported being refused care outright by medical providers, with even higher rates for transgender people of color. Fifty percent said they had to take it upon themselves to teach their medical providers about transgender care. This is not to mention all those who had their needs ignored, whether denied hormone therapy or some other medical need. Or people who nurses refused to bathe—or even touch. In a Lambda Legal survey report, *When Health Care Isn't Caring* (www.lambdalegal.org/publications/when-health-care-isnt-caring), 8 percent of TGNC participants reported physically rough or abusive treatment from health care providers.

The number of LGBT individuals 65 or over is projected to almost double by 2030.² It's hard to say how many of those are TGNC, but we do know that LGBT older

adults are twice as likely to live alone as their heterosexual counterparts and more than four times as likely to have no children.³ This reality means that the sort of informal caregiving often assumed to be in place for older adults may not be there for LGBT individuals as they age. That can be a particularly frightening prospect for transgender older adults because recent studies show that few health care professionals are competent to meet the needs of the aging transgender population.

The good news is that there are laws in place that protect older transgender people against discrimination in health care and housing. And there are documents to sign, such as wills, powers of attorney and health care proxies that can help you retain power over your decision-making as you age. Transgender older adults are strongly recommended to take advantage of these tools. Knowing your rights can make a big difference as you navigate through issues of housing, health care and life planning.

This fact sheet offers an overview of some of the issues facing transgender older adults. If you or someone you know has been discriminated against in any way for being TGNC, please contact Lambda Legal by calling our Legal Help Desk toll-free at 866-542-8336 or going to www.lambdalegal.org/help-form.

¹ See National Gay and Lesbian Task Force and National Center for Transgender Equality's "National Transgender Discrimination Survey" (2011), available at www.endtransdiscrimination.org.
² See AARP's "Wisdom of the Elders: AARP and SAGE" (June 2009), available at www.aarp.org/politics-society/rights/info-06-2009/wisdom_of_the_elders_aarp_and_sage.html.

³ See SAGE's "Public Policy & Aging Report: Integrating LGBT Older Adults into Aging Policy & Practice" (Summer 2011), available at http://sageusa.org/resources/resource_view.cfm?resource=304

MY STORY

STIGMA AND FEAR STILL HAUNT MY GENERATION

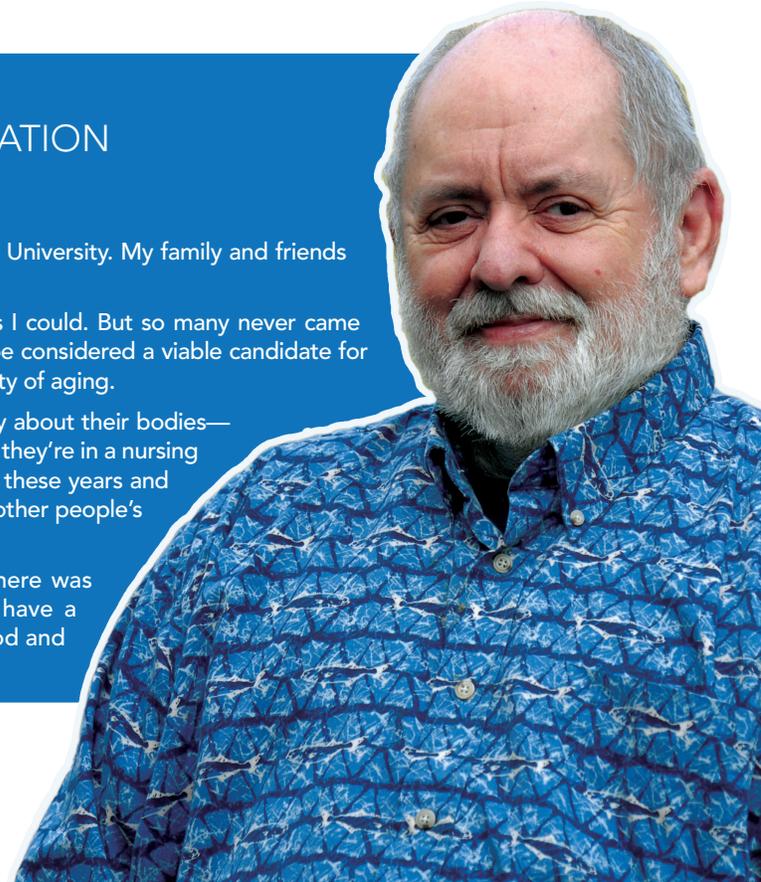
Jude Patton, 71

"In 1971 I started hormones, and I had surgery in '72 and '73 at Stanford University. My family and friends were very supportive. I've been with my wife, Carol, for 24 years.

"I've kept contact with as many transgender people in my generation as I could. But so many never came out because of the stigma. Also, in the old days people would not even be considered a viable candidate for [medical] transition if they did not go stealth. Then there's just the invisibility of aging.

"Transgender people who are aging worry about privacy issues, especially about their bodies—whether or not they've had surgery—and what that's going to mean when they're in a nursing home: 'What am I going to do when I've been more or less private for all these years and then my body is exposed?' 'What's going to happen to me as a result of other people's ignorance?'

"I'm still working because I have to: I didn't go to college because there was no college that I could get into [before I transitioned] that did not have a requirement that I wear a dress. I'm very lucky that my health is still good and I have a supportive doctor—I have certainly heard the horror stories."



FAQ

Answers to Common Questions From Transgender Older Adults

Q: I just entered a nursing facility and they're refusing to give me the hormone therapy that I have been taking for years. Are they allowed to do that?

A: It's definitely a violation of your rights under the Federal Nursing Home Reform Act (FNHRA) to be denied necessary care and appropriate treatment (see the sidebar "Nursing Home Rights" on next page for more about the FNHRA). Doctors have found transition-related health care to be medically necessary for many people; in 2008, the American Medical Association passed a resolution recognizing "an established body of medical research" that "demonstrates the effectiveness and medical necessity of mental health care, hormone therapy, and sex reassignment surgery as forms of therapeutic treatment for many patients..." (For a list of statements from medical professional associations supporting the medical necessity of transition-related health care, go to www.lambdalegal.org/publications/trans-insurance.)

Also, courts have repeatedly ruled that transition-related health care, including hormone therapy, is medically necessary when a doctor deems it so for an individual.

In 2011, in *Fields v. Smith*¹, a Federal Appeals Court affirmed transgender prison inmates' rights to transition-related health care while incarcerated. (For more about transgender health care rights, see "Transition-Related Health Care," also part of this Transgender Rights Toolkit, at www.lambdalegal.org/trans-toolkit.)

¹ *Fields v. Smith*, 2010 U.S. Dist. LEXIS 78914 (E.D. Wis. July 9, 2010).

Q: Staff at my nursing facility are rude to me because I'm transgender and do not allow me to dress according to who I am. Are they allowed to do that?

A: No. Under the FNHRA, "[a] nursing facility must protect and promote the rights of each resident." This protection includes the right of residents to a "reasonable accommodation of individual needs and preferences." Nursing facilities must also "attain or maintain [a resident's] highest practicable physical, mental, and psychosocial well-being."

It's a nursing facilities' job to ensure that you are treated with dignity and respect while in their care. As for your clothes, gender transition is now widely recognized by the medical community as benefiting a transgender person's psychological well-being, and one critical component is being able to live and be seen and treated by others in a manner consistent with one's gender identity.²

Q: What if I am denied housing because I'm transgender?

A: The Fair Housing Act ("FHA") is a federal law that protects you from being denied housing, whether it is public or private. What's more, the U.S. Department of Housing and Urban Development (HUD) announced new guidelines in 2010 clarifying that gender identity discrimination may qualify as sex discrimination under the FHA.³ If such a thing were to happen to you, it would also be a good idea to find out if your state or municipality has a non-discrimination law covering gender identity and expression, because such laws cover housing, including nursing facilities.

² See WPATH Standards of Care at www.wpath.org/publications_standards.cfm

³ See HUD's guidelines, available at http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/LGBT_Housing_Discrimination.

DEFINITION

"Transgender" and "TGNC"

Transgender is an umbrella term used to describe people whose gender identity, one's inner sense of being male or female, differs from their assigned or presumed sex at birth; Gender-NonConforming people don't meet society's expectations of gender roles.

“What’s going to happen to me as a result of other people’s ignorance?” —JUDE PATTON

Q: Can I decide who can and can’t visit me in a hospital or nursing facility?

A: Yes, new federal regulations empower patients in hospitals to choose their own visitors. Also, hospitals are barred from discriminating against visitors based on race, ethnicity, religion, sex, gender identity, sexual orientation or disability. In addition, the FNHRA specifies that residents of nursing facilities have the right to designate who they want to visit them. Hospitals and nursing facilities are required to inform patients and residents of these rights. There are no federal standards for assisted-living facilities, but state laws generally include some right to have visitors, although the extent of such rights varies from state to state.⁴

Q: My nursing home roommate is verbally abusive because I’m transgender. Am I allowed to get a replacement?

A: You don’t have to tolerate abuse from either roommates or staff. Under the FNHRA, a nursing home resident has the “right to be free from physical or mental abuse” and “the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents.” The nursing home is also prohibited from forcibly isolating you from other residents.

Q: How can I make sure that I have the most possible control over my future as a transgender older adult?

If you don’t already have a last will and testament; a living will; and a medical and financial power of attorney, getting those signed and distributed to the right people should be your first step. Also, if you have any special wishes about your funeral or disposition of your remains, it’s a good idea to write

those down as well and include them with the other documents. TGNC people who are estranged from family often find their gender identity or expression disrespected during the burial process.

If you are married or have kids, talk to a lawyer or estate-planning expert to make sure your wishes for your family are clear and can’t possibly be reversed by someone trying to intervene if you’re incapacitated or die.

For more information about medical and financial planning, check out Lambda Legal’s “Take the Power: Tools for Life and Financial Planning” at www.lambdalegal.org/take-the-power.

Q: I struggled for years over my gender identity and now I’m finally ready to transition. Should I be worried that I’m too old, physically, for hormones or surgery?

A: There is no age limit for transitioning. The Standards of Care published by the World Professional Association for Transgender Health (WPATH) advise that each individual be evaluated on a case-by-case basis.

It is true, however, that older adults of all gender identities are more likely to have chronic conditions such as heart disease or high blood pressure that can make gender-related hormone therapy or surgery medically risky. Your first step should be finding a doctor whom you trust and feel comfortable with discussing your readiness to transition and determining whether you have any health problems that might get in the way.

**NURSING
HOME
RIGHTS**
THE FEDERAL
GOVERNMENT
PROTECTS YOU

The Federal Nursing Home Reform Act, enacted in 1987, is a comprehensive federal statute that creates a minimum set of standards of care and rights for people living in Medicare and/or Medicaid-certified nursing facilities. A 2009 case (*Grammer v. John J. Kane Regional Centers*) gave the FNHRA teeth by determining that it can be used as the grounds for a civil lawsuit against a public nursing facility.

The FNHRA guarantees these rights:

- Staff must provide “care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being.”
- Staff must maintain patients’ “abilities in activities of daily living” such as bathing and dressing, unless health problems require changes.
- Patients have “free choice” to choose a physician and to be fully informed about care and treatment.
- Patients must be “free from interference, coercion, discrimination, and reprisal” for exercising their rights under the FNHRA.

⁴ See “Stories From the Field,” available at www.lambdalegal.org/publications/ext_nslc_stories-from-the-field

DOCUMENTARY GEN SILENT

Krysallis Anne Hembrough, the 60-year-old transwoman who dies of lung cancer in the documentary *Gen Silent*, is without any family in her last days; most of her blood relatives have rejected her transition and refused to see her. In a self-made video that director Stu Maddux incorporates into the film, Hembrough struggles to breathe and talks into the camera about her suffering. She recalls her life's biggest challenges—fighting in Vietnam, transitioning, family troubles—but says dying alone is the hardest of all. “This is terrifying,” she gasps. “Don’t let it happen to anyone you know.”

FOR MORE INFORMATION: Contact Lambda Legal at 212-809-8585, 120 Wall Street, 19th Floor, New York, NY 10005-3904. If you feel you have experienced discrimination, call our Help Desk toll-free at 866-542-8336 or go to www.lambdalegal.org/help.

RESOURCES

SOME USEFUL GUIDES FOR TGNC SENIORS

In 2011, Lambda Legal, along with several other organizations, published “**Stories From the Field: LGBT Older Adults in Long-Term Care Facilities**” (available for download at www.lambdalegal.org/publications/ext_nsclc_stories-from-the-field).

Other organizations offering resources for TGNC seniors include:

AARP Pride

www.aarp.org/relationships/friends-family/aarp-pride/

The AIDS Institute: HIV/AIDS and Aging Awareness

www.theaidsinstitute.org/education/bivaids-and-aging-awareness

American Society on Aging: LGBT Aging Issues Network

www.asaging.org/education/5

FORGE

<http://forge-forward.org/>

GRIOT Circle

<http://griotcircle.org/>

Leading Age: LGBT

<http://leadingage.org/LGBT.aspx>

National Center for Lesbian Rights: Elder Law

www.nclrights.org/site/PageServer?pagename=issue_elderLaw

National Coalition for LGBT Health

<http://lgbthealth.webolutionary.com/>

National Gay and Lesbian Task Force: Aging

www.thetaskforce.org/issues/aging

National Resource Center on LGBT Aging

<http://lgbtagingcenter.org>

Old Lesbians Organizing for Change

www.oloc.org

SAGE

www.sageusa.org

Transgender Aging Network

www.forge-forward.org/laging